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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDWAN THURMOND,

Petitioner,

vs.

GREG SMITH, *et al.*,

Respondents.

3:09-cv-00401-RCJ-RAM

ORDER

15 This habeas matter under 28 U.S.C. § 2254 comes before the Court following initial
16 review under Rule 4 of the Rules Governing Section 2254 Cases (the "Habeas Rules") of the
17 second amended petition (#21). Following upon said review, a response will be directed. The
18 Court notes that there potentially are substantial issues as to exhaustion and whether certain
19 claims are barred by the rule in *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d
20 1067 (1976). However, at this juncture, these issues are most efficiently resolved following
21 a response by respondents.

22 IT THEREFORE IS ORDERED that respondents shall have forty-five (45) days from
23 entry of this order within which to answer, or otherwise respond to, the amended petition,
24 including by motion to dismiss. Any response filed shall comply with the remaining provisions
25 below, which are tailored to this particular case based upon the Court's screening of the
26 amended petition and which are entered pursuant to Habeas Rule 4.

27 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this
28 case shall be raised together in a single motion to dismiss. Procedural defenses omitted from

1 such motion to dismiss will be subject to potential waiver. Respondents shall not file a
2 response in this case that consolidates their procedural defenses, if any, with their response
3 on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
4 lacking merit.

5 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
6 specifically cite to and address the applicable state court written decision and state court
7 record materials, if any, regarding each claim within the response as to that claim.

8 IT FURTHER IS ORDERED that, with any motion to dismiss or answer filed,
9 respondents shall file copies of any additional state court record materials – over and above
10 those filed previously at ## 13 & 22 – that are relevant and material to the procedural
11 defenses asserted therein and/or to consideration of the merits of the petitioner's claims as
12 to which dismissal is sought on the merits, including, but not limited to, any items listed in Rule
13 5(d) of the Rules Governing Section 2254 Cases that have not been filed previously.

14 IT FURTHER IS ORDERED that any state court record exhibits filed by respondents
15 herein shall be filed with a separate index of exhibits identifying the exhibits by number or
16 letter. The CM/ECF attachments that are filed further shall be identified by the number or
17 numbers (or letter or letters) of the exhibits in the attachment. **The hard copy of any**
18 **additional state court record exhibits shall be forwarded – for this case – to the staff**
19 **attorneys in Las Vegas, to the attention of: "P3."**

20 IT FURTHER IS ORDERED that petitioner shall have forty-five (45) days from service
21 of the answer, motion to dismiss, or other response to file a reply or opposition. The deadline
22 established by this order shall override any shorter deadline in a minute order issued pursuant
23 to the *Klinge* decision.

24 DATED: This 14th day of July, 2011.

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ROBERT C. JONES
Chief United States District Judge